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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NSIXTY, LLC, Plaintiff, v. UPOST MEDIA, INC., Defendant.	**Case No.: 2:17-cv-02233-KJD-CWH** **ANSWER TO COMPLAINT** **JURY DEMAND**

UPOST MEDIA, INC. ("uPost") Answers the Complaint of NSIXTY, LLC. ("NSixty") as follows:

ANSWER TO COMPLAINT

1. Paragraph 1 of the Complaint and Paragraphs lettered (A) through (K) of the "Prayer for Relief" contains declaratory statements and assers conclusions of law to which no response is required. To the extend a response is deemed necessary, Defendant uPost denies the allegations set forth in such Paragraphs.

2. Defendant uPost denies the allegations of Paragraphs 2, 6, 7, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 22 of the Complaint.

3. Defendant uPost admits the allegations of Paragraph 4 of the Complaint.

4. Defendant uPost lacks information sufficient to form a belief as to the truth or falsety of the allegations contained in Paragraphs 3, 8, 9, and 10 of the Complaint, and on that basis denies the same.

5. In response to Paragraph 13 of the Complaint, Defendant uPost re-alleges and incorporates the responses set forth to Paragraphs 1-12 of the Complaint.

AFFIRMATIVE DEFENSES

Defendant uPost asserts the following affirmative defenses to Plaintiff's claims, without assuming the burden of proof when such burden would otherwise rest with Plaintiff. Defendant uPost expressly reserves the right to amend its Answer and Affirmative Defenses as additional information become available and/or is otherwise discovered, and to amend, modify, or expand any of the following defenses, and/or to introduce othere defenses and counterclaims that may arise.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint and each purported claim for relief against Defendant fails to state a claim for which relief can be granted for the following reasons at a minimum: (i) non of the '115 Patent or '456 Patent claims read on any of the "uPost Products"[1]; (ii) the claims alleged to be infringed by the uPost Products fail to identify all the elements required to constitute an enforceable claim; (iii) the claims alleged to be infringed by the uPost Products are invalid due to prior art and/or instruct on matters that are obvious to one skilled in the art under 35 U.S.C. §102 and 103; and (iv) the claims alleged to be infringed by the uPost Products are invalid because they are directed non-patentable subject matter under 35 U.S.C. § 101, and specifically are directed to an abstract idea without significantly more under the test set forth in *Alice Corp. Pty. Ltd. v. CLS Bank Intern., 134 S. Ct. 2347 (U.S. 2014).*

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[1] Referred to as the "Accused Products" in the Complaint.

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SECOND AFFIRMATIVE DEFENSE

(Non-infringement)

Defendant does not, and has not, infringed any valid and enforceable claim of the '115 or '456 Patents directly or indirectly, literally or under the doctrine of equivalents.

THIRD AFFIRMATIVE DEFENSE

(Invalidity)

Plaintiff's claims of the '115 Patent and '456 Patent as properly construed are invalid for failure to comply with one or more of the requirements of 35 U.S.C. §§101 et seq., including, without limitation, the conditions of patentability set forth in §§101, 102, 103 and/or 112 for the following reasons at a minimum: (i) non of the '115 Patent or '456 Patent claims read on any of the "uPost Products"[2]; (ii) the claims alleged to be infringed by the uPost Products fail to identify all the elements required to constitute an enforceable claim; (iii) the claims alleged to be infringed by the uPost Products are invalid due to prior art and/or instruct on matters that are obvious to one skilled in the art under 35 U.S.C. §102 and 103; and (iv) the claims alleged to be infringed by the uPost Products are invalid because they are directed non-patentable subject matter under 35 U.S.C. § 101, and specifically are directed to an abstract idea without significantly more under the test set forth in *Alice Corp. Pty. Ltd. v. CLS Bank Intern., 134 S. Ct. 2347 (U.S. 2014)*.

FOURTH AFFIRMATIVE DEFENSE

(Lawful Conduct)

Upon information and belief, Plaintiff's claims are barred, in whole or in part, because any or all of Defendant's conduct has been lawful, justified, and/or privileged.

FIFTH AFFIRMATIVE DEFENSE

(Acquiescence, Waiver, Laches, or Estoppel)

Upon information and belief, Plaintiff is barred from enforcing the '115 Patent and the '456 Patent against Defendant under the doctrines of acquienscence, waiver, laches, and/or estoppel. Plaintiff is barred by these doctrines or any of them from asserting claims against

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[2] Referred to as the "Accused Products" in the Complaint.

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Defendant that arise from Defendant's offering of the uPost Products.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands & Ineqitable Conduct)

Upon information and belief, Plaintiff is barred from enforcing the '115 Patent or the '456 Patent against Defendant on the basis of unclean hands and inequitable conduct in connection with misrepresentations and omissions made in connection with Plaintiff's prosecution of such patents before the United States Patent and Trademark Office by, at a minimum, failing to disclose relevant or material prior art.

SEVENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

Defendant uPost reserves all affirmative defenses under Rule 8(c) of the Federal Rules of Civil Procedure and any other defenses at law or equity that may be available now or may become available in the future based on any discovery or any other factual investigation or that are otherwise supported by the allegations of Defendants as set forth herein or in any amended pleading.

JURY DEMAND

Defendant uPost hereby demands trial by jury on all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Defendant uPost prays for judgment against Plaintiff follows:

A. That Plaintiff take nothing under its complaint;

B. For a declaration that the '115 Patent is invalid and unenforceable;

C. For a declaration that the '456 Patent is invalid and unenforceable;

D. For an order voiding or invalidating the '115 Patent;

E. For an order voiding or invalidating the '456 Patent;

F. For a declaration that Defendant has not infringed the '115 Patent and the asserted claims thereof;

G. For a declaration that Defendant has not infringed the '456 Patent and the asserted claims thereof;

H. For an award pursuant to 35 U.S.C. §285, or other applicable authority, that Defendant uPost be compensated for all reasonable attorneys' fees and costs incurred in this action; and

I. For an award of such other relief in favor of Defendant uPost as the Court shall deem just and reasonable.

Dated this 5th day of September, 2017.

WEIDE & MILLER, LTD.

By: */s/ F. Christopher Austin*
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Attorneys for Defendant, uPost Media, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WEIDE & MILLER, LTD. and that on September 5, 2017, I served a full, true and correct copy of the foregoing **ANSWER TO COMPLAINT** via the United States District Court's CM/ECF filing system upon the following:

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/s/ James L. Morris
An employee of WEIDE & MILLER, LTD.